IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6393 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LAXMINARAYAN SHRI RAMRATAN DUBE

Versus

SATYANARAYAN STEEL ROLLING MILL

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Appearance:

1. Special Civil Application No. 6393 of 2001

MR TR MISHRA for Petitioner No. 1

MR KETAN A DAVE for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/12/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the petitioner has challenged the judgment and award dated 3-5-2001 passed by the Labour Court, Bhavnagar in Reference (LCB) No. 333 of 1990 whereby the

Labour Court rejected the petitioner's claim for reinstatement with backwages.

2. The petitioner raised an industrial dispute through a Union contending that the petitioner was employed by the respondent - employer as a Supervisor and when the petitioner's services were terminated on 17-4-1990, the petitioner had already put in 5 years permanent service as a Supervisor at monthly salary of Rs.1700 / 1750/- p.m.. However, the respondent was not issuing any identity card or wage slip or attendance card nor was the respondent giving any benefits under the relevant Labour Legislations to the petitioner and, therefore, on 17-4-1990, the respondent orally terminated the petitioner's services without giving any notice, notice pay or retrenchment compensation. In conciliation proceedings themselves, the respondent disputed the petitioner's case that there was any relationship of employer and employee between the parties. The respondent stated that the respondent had given lumpsum contract to the petitioner and for that the respondent had also paid advance of Rs.4500/- and Rs.2500/aggregating to a sum of Rs.7000/- on 13-4-1990 as evidenced by two vouchers. Since the conciliation proceedings failed, the reference was made to the Labour Court, Bhavnagar.

3. The petitioner examined himself and one Mr Khanmohammed Mohammedbhai claiming to be a co-workman as witnesses for the workman. However, after examining the documentary and oral evidence on record, the Labour Court came to the conclusion that the petitioner was not an employee of the respondent. The Labour Court further held that the petitioner was employed in a supervisory capacity and was therefore not a workman within the meaning of the Industrial Disputes Act and, therefore also, the petitioner was not entitled to make any claim against the respondent under the Industrial Disputes Act. The Labour Court accordingly dismissed the reference with no order as to costs. It is the said award which is under challenge in this petition.

4. Mr Mishra learned counsel for the petitioner has vehemently submitted that the Labour Court failed to notice the distinction between the contract of service and contract for service. Even according to the Labour Court, the two vouchers dated 13-4-1990 did not indicate that the payment was made to the petitioner in his capacity as a Contractor. The evidence of Khanmohammed to the effect that the petitioner was employing and discharging subordinate employees is also misconstrued by

the Labour Court. The findings given by the Labour Court are perverse, and in any case, the matter deserves to be remanded to the Labour Court for a fresh trial.

5. On the other hand, Mr Ketan Dave learned counsel for the respondent has submitted that the findings given by the Labour Court are findings of fact and that in this petition under Article 227 of the Constitution, this Court would not interfere with the same, unless there is any jurisdictional error or any error of law apparent on the face of the record.

6. Having heard the learned counsel for the parties, it appears to the Court that when there is petitioner's word against the respondent's word, the Labour Court had no other alternative but to consider whatever documentary evidence was on record and the attendant circumstances. The two vouchers produced by the respondent for sums of Rs.4500/- and Rs.2500/- are not disputed by the petitioner. Testing the petitioner's case that he was an employee employed on monthly salary of Rs.1750/-, it is not possible to appreciate as to how the aforesaid amounts mentioned in the vouchers would tally against the monthly salary for a month or even for two to three months. The case of the petitioner that the amounts were paid as an advance also does not carry any conviction because had there been advance amount paid towards salary, there would be some reference to the months for which the amounts were paid as advance salaries. Apart from this aspect, the fact that the petitioner's own witness Khanmohammed stated that the petitioner had 10 to 15 persons working under him and that it was for the petitioner to decide whom to employ and whom to discharge is a relevant circumstance not only for considering the question, whether the petitioner was a workman or not, but also for considering the question whether the relationship between the petitioner and the respondent was that of employer and employee. The circumstance that the petitioner who was employing the persons whom he considered to be suitable and discharging the employees whom he did not consider to be suitable, is more consistent with the case of the respondent that the petitioner was a contractor and not an employee of the respondent.

In view of the above set of evidence, no fault can be found with the Labour Court's finding that the petitioner had failed to prove his case that he was an employee of the respondent.

7. In view of the above discussion, the petition is

dismissed. Rule is discharged with no order as to costs.

(M.S. Shah,J)

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